

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
07-20022-CR-UNGARO-BENAGES/O'SULLIVAN
Case No. _____
18 U.S.C. § 1349

UNITED STATES OF AMERICA

vs.

BENJAMIN R. METSCH,

Defendant.

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

1. The defendant, **BENJAMIN R. METSCH**, was licensed to practice law in the State of Florida and worked at a law firm in Miami, Florida.
2. **BENJAMIN R. METSCH** devoted a considerable portion of his law practice to health care and was well known within the South Florida health care community for his preparation of legal documents in connection with the sales of health care related companies, including durable medical equipment ("DME") companies. **METSCH** and his firm were often hired to prepare such documents and to help complete the sales of such companies.

3. The sale of health care related companies involved the preparation of legal documents, including stock transfer agreements and operational agreements. These documents were prepared and executed at **BENJAMIN R. METSCH**'s law firm, where the closings of the sales of the companies customarily took place.

4. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

5. Part B of Medicare was a health insurance program that covered, among other things, various physician and other health services, including durable medical equipment ("DME"), that were medically necessary and ordered by licensed medical doctors or other qualified health care practitioners.

6. Part B Medicare providers included health care-related companies, such as DME companies, that had been approved by Medicare to submit claims for reimbursement for health care items and services provided to patients insured by Medicare, known as "beneficiaries."

7. Federal law and Medicare rules required truthful, complete information concerning the ownership and control of Medicare providers, including DME companies. For instance, Title 42, United States Code, Section 1320a-3a(a) stated that no payment would be made under Part B of Medicare unless the Medicare provider had given HHS full and complete information on each person with an ownership or controlling interest in the provider. Further, Medicare rules required that changes or updates in the ownership or control interest of a DME company be reported to Medicare within 30 days.

**CONSPIRACY TO COMMIT HEALTH CARE FRAUD
(18 U.S.C. § 1349)**

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are realleged and incorporated as though fully set forth herein.

2. From in or around October 2002, and continuing through in or around August 2004, in Miami-Dade County, in the Southern District of Florida, the defendant,

BENJAMIN R. METSCH,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with a person known to the United States Attorney, to violate Title 18, United States Code, Section 1347, that is, to execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for **BENJAMIN R. METSCH** and his co-conspirator to facilitate fraudulent DME company sales transactions and earn legal fees for doing so.

Manner and Means Used to Accomplish the Conspiracy

The manner and means by which **BENJAMIN R. METSCH** and his co-conspirator sought to accomplish the purpose and object of the conspiracy included, but were not limited to, the following:

4. **BENJAMIN R. METSCH** and his co-conspirator would prepare and cause the preparation of fraudulent sales documents, including stock transfer agreements and operational agreements, concerning DME companies that previously had received authorization from Medicare to bill Medicare Part B to receive reimbursement for DME-related items and services. The sales prices of the DME companies, as reflected on the sales documents, often greatly understated the true sales prices. The closings for sales of the companies occurred at **METSCH's** law firm.

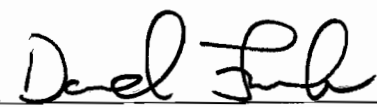
5. With the knowledge of **BENJAMIN R. METSCH** and his co-conspirator, nominees, or "straw" purchasers, served as the purchasers in the transactions in order to conceal the involvement of other individuals who controlled the activities of the DME companies.

6. After the sales of the DME companies, the nominee purchasers and those controlling the nominees failed to provide timely and complete notification to Medicare of the changes in the ownership and control of the companies. This impaired Medicare's ability to properly oversee the activities of these companies. The DME companies thereafter submitted fraudulent Medicare claims in connection with DME-related items and services as though the companies were still owned and controlled by the prior owners of the companies rather than by the nominee purchasers.

All in violation of Title 18, United States Code, Section 1349.



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



DAVID FRANK
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

vs.

Benjamin R. Metsch,

Defendant.

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West _____
_____ FTL _____ WPB _____ FTP _____

New Defendant(s) _____

Yes _____ No _____

Number of New Defendants _____

Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: _____

Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter? _____

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? _____ Yes X No
8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? _____ Yes X No
If yes, was it pending in the Central Region? _____ Yes _____ No
9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No
10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? _____ Yes X No


DAVID FRANK
ASSISTANT UNITED STATES ATTORNEY
COURT ID No. A5500486

*Penalty Sheet(s) attached

REV. 1/14/04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Benjamin R. Metsch

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud

18 U.S.C. § 1349

* Max. Penalty: 10 years' imprisonment

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

United States District Court

SOUTHERN

DISTRICT OF

FLORIDA

UNITED STATES OF AMERICA

v.

BENJAMIN R. METSCH,

Defendant.

WAIVER OF INDICTMENT

07 - 20022

CASE NUMBER:

CR - UNGARO - BENAGES

MAGISTRATE JUDGE
O'SULLIVAN

I, BENJAMIN R. METSCH, the above named defendant, who is accused of

conspiracy to commit health care fraud, Title 18, United States Code, section 1347, all in violation of
Title 18, United States Code, section 1349,

being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court on
_____ prosecution by indictment and consent that the proceeding may be by information rather than by indictment.
Date

BENJAMIN R. METSCH
Defendant

JANE W. MOSCOWITZ
Counsel for Defendant

Before _____
Judicial Officer